United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

9:30 AM
1:00-00000 **Chapter**

#0.00 **This calendar will be conducted remotely, using ZoomGov video and audio.**

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: https://cacb.zoomgov.com/j/1601073842
Meeting ID: 160 107 3842
Password: 554063
Dial by your location: 1 -669-254-5252 OR 1-646-828-7666
Meeting ID: 160 107 3842
Password: 554063

Docket 0

Tentative Ruling:

- NONE LISTED -

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

9:30 AM

1:15-11162 Steven Sandler **Chapter 13**

#1.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOCIATION

fr. 12/8/21

Docket 149

Tentative Ruling:

Petition Date: 04/03/2015
Ch. 13 Plan Confirmed 3/09/2016
Service: Proper. Opposition filed.
Property: 20971 Avenue San Luis, Woodland Hills, California 91364
Property Value: $575,000 (per debtor's schedules)
Amount Owed: $447,292.98
Equity Cushion: 22.2%
Equity: $127,707.02
Post-Petition Delinquency: $11,289.95 (3 missed payments of $13,045.76, attorney's fees and costs of $1,238.00, less suspense account $2,993.81)

Movant seeks relief under 11 U.S.C. 362(d)(1) specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 6 (Codebtor stay), 7 (waiver of the 4001(a)(3) stay). Movant alleges that its interest in the Property are not being adequately protected since Debtor has been missing payments.

Debtor opposes this motion on the grounds that the Debtor is in the process of selling the Property. Escrow will open by November 24, 2021 and the sale should close by December 31, 2021. From the sale, Movant should receive full payment on its claim.

The Court will continue this hearing to January 5, 2022 at 9:30am. There is sufficient equity in the home to protect Movant until then.

Appearance Required.

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

9:30 AM

CONT... Steven Sandler **Chapter 13**

Party Information

Debtor(s):

Steven Sandler	Represented By Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

9:30 AM
1:17-13285 Angela Jean Garcia **Chapter 13**

#2.00 Motion for relief from stay

NEWREZ LLC DBA DBA SHELLPOINT MORTGAGE SERVICING

fr. 8/11/21, 9/8/21; 10/20/21, 12/8/21

Docket 54

Tentative Ruling:

Nothing has been filed since this matter was continued. What is the status of this case?

Appearance Required.

Previous Tentative:

Petition Date: 12/8/2017
Ch. 13 plan confirmed: 11/26/2018
Service: Proper. No opposition filed.
Property: 1934 Lucas St. #3, San Fernando, CA 91340
Property Value: $322,521 (per debtor's schedules)
Amount Owed: $246,650
Equity Cushion: 16%
Equity: $50,069
Post-Petition Delinquency: $18,896.41 (12 payments of $1,708.10, less suspense balance of $1,600.79)

Movant alleges the last payment received was on or about May 17, 2021

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); and 7 (waiver of the 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT

9:30 AM

CONT... Angela Jean Garcia **Chapter 13**

HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS THAT SHALL INCLUDE THE FOLLOWING LANGUAGE:

"Moratoriums not affected. This order does not terminate any moratorium on evictions, foreclosures or similar relief. Nothing in this order should be construed as making any findings of fact or conclusions of law regarding the existence of, or merits of any dispute regarding, any such moratorium."

Party Information

Debtor(s):

Angela Jean Garcia	Represented By David H Chung

Movant(s):

NewRez LLC d/b/a Shellpoint	Represented By Nancy L Lee Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:00 AM
1:21-11412 Jose Carlos Nevarez **Chapter 13**

#3.00 Motion for relief from stay

OSM LOAN ACAUISITIONS, IX LP

fr.10/20/21; 11/17/21; 12/16/21

Docket 23

Tentative Ruling:

At the hearing held on Dec. 16, 2021, the Court ordered Debtor to file a declaration regarding his unauthorized use of cash collateral, and any motion or stipulation required to bring him into compliance with the requirements of the Code. On January 4, 2022, Debtor filed the required declaration but no motion for use of cash collateral, or stipulation thereon, has been filed. Moreover, Debtor did not include with his declaration any evidence of the residential leases from which the cash collateral is garnered.

These basic compliance issues were to have been sorted out at this point in this bankruptcy. While the Court did allow the Debtor to convert this case to chapter 11 in order to give him a chance at reorganization, this glaring oversight makes his chances of success in a chapter 11 case dubious at best.

APPEARANCE REQUIRED

Prior Tentative Ruling below:

As the RFS motion turns heavily on whether there is sufficient equity to protect the creditor and whether a confirmation of the Chapter 11 plan is likely, The question of likely reorganization will be addressed here.

The Debtor entered into a loan ("Loan") with OSM Loan Acquisitions IX, LP ("Creditor"). The principal of the Loan was $740,000.00 at a non-default interest rate of 10.99%. The Loan had an approximate one-year terAm and matured on December 1, 2020. The Loan was secured by way of 1st Deed of Trust ("DOT") against real

property located at 13200 Pinney Ave., Pacoima, CA 91331 ("Property"). According to a recent appraisal, the Property is valued at approximately $1,138,000.00. Dkt. No. 34 The Debtor has been in default of the Loan for a year now. The default interest rate is 18.99%. Debtor filed for bankruptcy in May 2021 and the case was dismissed on August 27, 2021. Case No. 21-10877. Debtor filed this bankruptcy. Shortly thereafter, the Creditor filed a relief from stay motion which the Debtor opposes. The Debtor also filed a motion to convert this chapter 13 case to a chapter 11, which the Creditor opposes.

On November 17, 2021, a hearing was held on Movant's motion for relief from stay and Debtor's motion to convert. At the hearing, Debtor elaborated on his theory about cramming down the interest of the loan. The Court allowed further briefing on this issue and continued the motion to December 16, 2021.

Default Interest:

Generally, the Code does not provide for pendency interest to creditors, because the filing of the petition usually stops interest from accruing. Id. Section 506(b), however, provides an exception for oversecured creditors:

> To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

§ 506(b). Thus, an oversecured creditor can recover pendency interest as part of its allowed claim, at least to the extent it is oversecured. Wells Fargho Bank, N.A. v. Beltway One Dev. Grp., LLC (In re Beltway One Dev. Grp., LLC) 547 B.R. 819, 826 (9th Cir. BAP 2016). The postpetition, pre-effective date interest rate determined under § 506(b) commences on the petition date and continues until the effective date stated in the confirmed plan, after which the cramdown interest rate, determined under § 1129, commences if the plan is confirmed. Id. at FN 1; see also Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai), 581, F.3d 1090, 1101 (9th Cir. 2009). Moreover, bankruptcy courts "should apply a presumption of allowability for the contracted for default rate, provided that the rate is not unenforceable under

applicable nonbankruptcy law." Id. at 830.

Subsection §1123(d) renders void *Entz-White*'s rule that a debtor who proposes to cure a default may avoid a higher, post-default interest rate in a loan agreement. Pacifica L 51 LLC v. New Invs. Inc., 840 F.3d 1137, 1140 (9th Cir. 2016). The plain language of § 1123(d) compels the holding that a debtor cannot nullify a preexisting obligation in a loan agreement to pay post-default interest solely by proposing a cure. Id. at 1141.

Creditor is a secured creditor and the Property currently has a limited equity cushion. As such, the Creditor is entitled to pendency interest, costs and charges (per the terms of the Loan). Furthermore, the default interest rate that has accrued prior and during the pendency of the bankruptcy is allowed until a plan is confirmed; confirming a plan does not relieve the Debtor from the penalties that were incurred while the Loan was in default – i.e. the default interest. As such, the Creditor is entitled to its principal, plus interest at the default rate of 18.99%, and any costs incurred up until either a plan is confirmed, or the equity cushion is extinguished. Based on the Creditor's pleadings, the current amount of the claim (as of December 2, 2021) is approximately $1,008,041.56 and the default interest adds approximately $390.35 to the Creditor's claim per day.

Cramming Down Interest:

11 U.S.C. §1123(a)(5)(H) provides:

> (a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan …
>
> (5) provide adequate means for the plan's implementation, such as …
>
> (H) extension of a maturity date or a change in an interest rate or other term of outstanding securities…

The controlling case on an appropriate cramdown interest is the Supreme Court case Till v. SCS Credit Corp., 541 U.S. 465 (2004). In Till, the Supreme Court identified the appropriate method to determine a cramdown interest rate in the context of a Chapter 13 case as the "formula approach." Under the formula approach, the

Court calculates the appropriate interest rate by beginning with the national prime rate and then adjusting upward based upon any risk factors. Till, 541 U.S. at 479. These risk factors include, but are not limited to, the circumstances of the estate, the nature of the security, and the duration and feasibility of the plan. Id. The Supreme Court made clear that, "starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors[.]" Id.

In Till, the matter before the Supreme Court involved a Chapter 13 cramdown, but its analysis applies equally in the Chapter 11 context. In re Tapang, 540 B.R. 701, 707 (N.D. Cal. Bankr. 2015). To determine the appropriate interest rate in the case of a Chapter 11 cramdown:

> [A] bankruptcy court should apply the market rate of interest where there exists an efficient market. And, when no efficient market exists for a Chapter 11 debtor, then the Bankruptcy Court should employ the formula approach endorsed by the Till plurality.

In re Dunlap Oil Co, 2014 Bankr. LEXIS 4931, at * 19 (BAP 9th Cir. 2014).

In the Debtor's supplemental brief, Debtor proposed to pay out the Creditor's claim by modifying the terms of the Loan by repaying it "over a reasonable period of time at a reasonable rate of interest." There are no details as to what a "reasonable" time would be. The Creditor seems to presume that it is a thirty (30) year note but Debtor's position leaves room for interpretation. Further, the chart of proposed payments includes both interest and principal payments. This suggests that the Debtor is attempting to transform an interest only note with a balloon payment to something resembling more of traditional mortgage. There is no break down as to what the percentage of the payments would go towards paying the principal and what goes towards paying the interest and does not suggest how long it would take to pay off the Movant's claim. Finally, the Debtor's calculation is premised on a claim of one million ($1,000,000.00) dollars. As of this date, the Creditor's claim is already over that figure and continues to grow every day. By the time the Debtor can confirm a plan, it is likely the Creditor's claim will be well above $1,050,000.00, so the numbers provided by the Debtor are off. With that said, an analysis of whether the Debtor could viably confirm a plan based on cramming down the interest payments will be

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CONT... Jose Carlos Nevarez **Chapter 13**

addressed.

Debtor argues that the interest rate will be between 5-10% based on the Till risk factors. The current prime rate is 3.25% and Debtor argues the equity cushion and the Creditor being oversecured favors a lower interest rate. The Creditor argues that the Debtor would not be able to obtain a loan from the market with anything lower than a 10.99% interest payment. If this were package as a traditional mortgage, then there should be an efficient market to decide what the interest would be. Debtor has not provided the Court with adequate details on what the length of time would be and what the market would provide as an appropriate interest. With that said, there are some negative factors which would most likely require a higher interest rate rather than a lower one. The first of which is inflation and possibility of increased interest payments. The possibility of inflation causing the interest rate to increase is likely high now and as a result lenders may require higher interest rates to curb the inflationary effect. The next factor is the fact the Debtor has defaulted on two separate loans. The Debtor has defaulted on this loan and another loan (secured by a 2nd DOT) to a David De Wispelaere – as of the petition date the outstanding balance was $60,587.57 with a default interest rate of 21%. This would make lending to the Debtor riskier; thus, require a higher interest rate. Finally, although there is an equity cushion now, both secured loans are oversecured and are incurring default interest. Every day the equity cushion gets smaller, and by approximately April or May of 2022, the equity cushion would be all but gone. Realistically, the Debtor is looking at an interest rate no lower than 9%.

According to Debtor's amended schedule I (Dkt. No. 39), the Debtor's projected monthly income is $10,187.26. According the Debtor's schedule J (Dkt. No. 16) the Debtor's monthly expenses are $8,492.17. This leaves the Debtor with $1,695.09 surplus to go to creditors. In the Debtor's expenses is $6,777.17 that go toward the home ownership expense. The monthly payments amortized as the Debtor proposes will be over $8,000.00. What puts this over the top though is the 2 DOT. Even if that is treated similarly to how this Loan will be treated, then the expenses are greater than projected net income. The expenses listed in schedule J are barebones and there is not much room to maneuver. Cramming down the interest and amortizing payments over 30 years cannot be done, even with the Debtor's recent increase of income. If debtor cannot find another source of income or a way to effectively address

10:00 AM

CONT... Jose Carlos Nevarez **Chapter 13**

these issues, there is no point in denying relief from stay or converting the case to Chapter 11. See In re Tsung Yu Chien, 2020 U.S. Dist. LEXIS 126601 * 8 (C.D. Cal. 2020) (Chapter 11 requires a reorganization of a debtor's assets[,]" and "[i]f [the debtor] could not reorganize, conversion to Chapter 11 would be futile.") That said, the debtor has a 30 year history with this property and appears very motivated to find a way to reorganize. It is also very early in the case and debtor should be given an opportunity to propose a feasible plan.

The court will set a date for a disclosure hearing and continue the RFS to that date to see whether he has found a way to deal with the very serious issues outlined above. The continued date and disclosure hearing will be March 2, 2022 at 1:00 pm. Debtor should file a detailed disclosure statement and plan explaining how he will actually confirm a plan in the time permitted under the rules.

Appearance Required

Party Information

Debtor(s):

Jose Carlos Nevarez	Represented By Nathan A Berneman

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:00 AM

1:21-11702 Yeghia Harutunian **Chapter 7**

#4.00 Motion for relief from stay (**2018 Rancher 4x4 AT)**

AMERICAN HONDA FINANCE CORPORATION

Docket 14

Tentative Ruling:

Petition Date: 10/16/2021
Ch: 7
Service: Proper. No opposition filed.
Property: 2018 Rancher 4x4 AT VIN: 1HFT E414 2J44 00049
Property Value: $ 5,725 (per Movant's evidence)
Amount Owed: $ 10,489.01
Equity Cushion: 0.0%
Equity: $0.00.
Delinquency: $6886.32

Movant alleges cause for relief under 362(d)(1) due to no equity cushion, missed post-petition payments, and the car is not listed on debtor's schedules. Movant alleges that the last payment for this vehicle was received on or about Feb. 18, 2019.

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Yeghia Harutunian — Represented By Aris Artounians

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

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CONT... Yeghia Harutunian **Chapter 7**

Trustee(s):

Amy L Goldman (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:00 AM
1:21-11702 Yeghia Harutunian **Chapter 7**

#5.00 Motion for relief from stay (**2017 Rancher 4x4 ES)**

AMERICAN HONDA FINANCE CORPORATION

Docket 16

Tentative Ruling:

Petition Date: 10/16/2021
Ch: 7
Service: Proper. No opposition filed.
Property: 2017 Rancher 4x4 ES VIN: 1HFT E406 0H43 02523
Property Value: $ 4,710 (per Movant's evidence)
Amount Owed: $ 9,447.24
Equity Cushion: 0.0%
Equity: $0.00.
Delinquency: $6,326.53

Movant alleges that the last payment received for this vehicle was on or about Feb. 18, 2019.

Disposition: GRANT under 11 U.S.C. 362(d)(1) and (d)(2). GRANT relief requested in paragraph 2 (proceed under applicable non-bankruptcy law) and 6 (waiver of 4001(a)(3) stay).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING.
MOVANT TO LODGE ORDER WITHIN 7 DAYS.

Party Information

Debtor(s):

Yeghia Harutunian — Represented By Aris Artounians

Trustee(s):

Amy L Goldman (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
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Wednesday, January 12, 2022 **Hearing Room 302**

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CONT... Yeghia Harutunian **Chapter 7**

10:00 AM
1:21-11801 Manuel Gonzalez **Chapter 13**

#6.00 Motion for relief from stay

BANK OF NEW YORK MELLON TRUST CO.

Docket 19

Tentative Ruling:

Petition Date: 11/1/2021
Ch: 13
Service: Proper; original borrowers served; co-grantee Alicia Hernandez not served. No opposition filed.
Property: 19050 Primrose Ln., Apple Valley, CA 92308
Property Value: N/A debtor failed to file schedules
Amount Owed: N/A
Equity Cushion: N/A
Equity: N/A
Post-Petition Delinquency: N/A

Movant alleges cause for relief under 362(d)(4) due to unauthorized transfers of, and multiple bankruptcies affecting, the subject property. Movant alleges that a fraudulent grant deed was executed by deceased homeowners Donald and Barbara Leis in favor of Debtor and an individual named Alicia Hernandez. The allegedly fraudulent grant deed was executed 4/28/2020, one day after Barbara Leis passed away, and two years after Donald Leis died.

Movant also alleges cause to annul the automatic stay due to actions taken during the pendency of the bankruptcy without notice or knowledge of the filing. On Nov. 2, 2021, Movant's foreclosure trustee conducted a trustee's sale of the real property without notice or knowledge of this filing. Movant requests annulment to prevent this case from invalidating the foreclosure sale.

Disposition: GRANT under 11 U.S.C. 362(d)(1). GRANT relief requested in paragraphs 2 (proceed under non-bankruptcy law); 5 (annulment of stay); 6

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CONT... Manuel Gonzalez **Chapter 13**

(relief from co-debtor stay as to Barbara and Donald Leis) 7 (waiver of the 4001(a)(3) stay); 8 (law enforcement may evict); 9 (relief under 362(d)(4)); and 10 (relief binding & effective for 180 days against any debtor without further notice).

NO APPEARANCE REQUIRED—RULING MAY BE MODIFIED AT HEARING. MOVANT TO LODGE ORDER WITHIN 7 DAYS. MOVANT IS ORDERED TO SERVE A COPY OF THE ENTERED ORDER ON THE ORIGINAL BORROWER AT THE ADDRESS OF THE AFFECTED PROPERTY.

Party Information

Debtor(s):

Manuel Gonzalez	Pro Se

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:00 AM

1:21-12021 Carlos Gerald Smith **Chapter 13**

#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 9

Tentative Ruling:

On 12/16/2021, Debtor filed this chapter 13 case. Debtor had 1 previous bankruptcy case that was dismissed within the previous year. The First Filing was a chapter 13 that was filed on 02/16/2021 and dismissed on 04/08/2021 for the debtor decided to work on an offer and compromise or payment plan directly with the Internal Revenue Service rather than continue with the previous bankruptcy case.

Debtor now moves for an order continuing the automatic stay as to all creditors. Debtor argues that the present case was filed in good faith notwithstanding the dismissal of the previous case for the debtor decided to work on an offer and compromise with the Internal Revenue Service because the debtor believes he can afford to pay back his tax liability inside this proposed Chapter 13 plan. Debtor has not been able to communicate with an agent at the Internal Revenue Service over the past 8 months, and is concerned his wages will be garnished, and debtor believes he needs bankruptcy protection to resolve his outstanding debt. Debtor claims that the presumption of bad faith is overcome as to all creditors per 11 U.S.C. 362(c)(3)(C)(i) because there has been a substantial change in their financial affairs as they started a new job two months ago.

Service proper. No opposition filed.

MOTION GRANTED. RULING MAY BE MODIFIED AT HEARING.
NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

Carlos Gerald Smith — Represented By
D Justin Harelik

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

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CONT... Carlos Gerald Smith **Chapter 13**

Trustee(s):

Elizabeth (SV) F Rojas (TR) Pro Se

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1:13-10518 Reliable Trust Deed Services, Inc. **Chapter 7**

#8.00 Motion for (1) Order to Disallow Claim 4-1 Filed by LPS Agency Sales and Posting Inc.; or in the Alternative, and Order Estimating the Value of Claim 4-1 at $1.00 for All Purposes

Docket 108

Tentative Ruling:

On March 25, 2013, Claimant LPS Agency Sales & Posting, Inc. filed unsecured claim 4-1 against Debtor's estate in the amount of $69,923.55, for services performed. Trustee objects to the allowance of Claim 4-1, arguing that the claim fails to describe the nature of the purported services performed and the attachment is vague and ambiguous as to the nature of the purported services.

Under FRBP 3001(f), "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." A proof of claim provides "some evidence as to its validity and amount" and prima facie validity is "strong enough to carry over a mere formal objection without more." Lundell v. Anchor Construction Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000), quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991). To be legally sufficient and prima facie valid under FRBP 3001, a claim must: (1) be in writing; (2) make a demand on debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would make the allowance equitable. 9 Collier on Bankruptcy (15th ed. Rev. 2004) ¶3001.05[2].

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. FRBP 3001(f) states that a Proof of Claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim. FRBP 3001-3007. LR 3007-1.

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient objection to rely solely on an alleged lack of prima facie validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, *e.g.*, id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004). However, "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking prima facie validity.

"The court, after notice and a hearing, shall determine the amount of such claim… as of the date of the filing of the petition, and shall allow such claim, except to the extent that – (1) such claim is unenforceable against debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated." 11 U.S.C. §502(b).

An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP § 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified. LBR § 3007-1(c).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991).

Service on Claimant was proper, per the address listed for notice on Proof of Claim 4-1. No response filed.

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

OBJECTION SUSTAINED; Claim 4-1 is disallowed in its entirety.
TRUSTEE TO LODGE ORDER WITHIN 7 DAYS.
NO APPEARANCE REQUIRED ON 1-12-2022.

Party Information

Debtor(s):

Reliable Trust Deed Services, Inc.
Represented By
Gerald McNally Jr
Mark S Blackman

Trustee(s):

David Seror (TR)
Represented By
David Seror (TR)
Richard Burstein
Travis M Daniels
Reagan E Boyce

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1:13-10518 Reliable Trust Deed Services, Inc. **Chapter 7**

#9.00 Motion for (1) Order to Disallow Claim 7-1
Filed by Ian L. Minto; or in the Alternative,
and Order Estimating the
Value of Claim 7-1 at $1.00 for All Purposes

Docket 111

Tentative Ruling:

On April 19, 2013, Claimant Ian L. Minto filed unsecured claim 7-1 against Debtor's estate in the amount of $2,500,000. The basis for the claim asserted is a civil litigation action filed in Marin County in 2007. Trustee objects to the allowance of Claim 7-1, arguing that the claim purports to be against a different entity and Claimant has not provided any evidence to support his assertion that Debtor is responsible for Claimant's damages, whether the litigation was resolved, what the resolution of the litigation was (if any). Trustee rests his argument for disallowance on the vague and unsubstantiated nature and extent of the claim.

Under FRBP 3001(f), "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." A proof of claim provides "some evidence as to its validity and amount" and prima facie validity is "strong enough to carry over a mere formal objection without more." Lundell v. Anchor Construction Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000), quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991). To be legally sufficient and prima facie valid under FRBP 3001, a claim must: (1) be in writing; (2) make a demand on debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would make the allowance equitable. 9 Collier on Bankruptcy (15th ed. Rev. 2004) ¶3001.05[2].

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. FRBP 3001(f) states that a Proof of Claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim. FRBP 3001-3007. LR 3007-1.

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient objection to rely solely on an alleged lack of prima facie validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section 502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, *e.g.*, id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004). However, "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking prima facie validity.

"The court, after notice and a hearing, shall determine the amount of such claim… as of the date of the filing of the petition, and shall allow such claim, except to the extent that – (1) such claim is unenforceable against debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated." 11 U.S.C. §502(b).

An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP § 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified. LBR § 3007-1(c).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991).

10:30 AM

CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

Service on Claimant was proper, per the address listed for notice on Proof of Claim 7-1. No response filed.
OBJECTION SUSTAINED; Claim 7-1 is disallowed in its entirety.
TRUSTEE TO LODGE ORDER WITHIN 7 DAYS.
NO APPEARANCE REQUIRED ON 1-12-2022.

Party Information

Debtor(s):

Reliable Trust Deed Services, Inc.	Represented By Gerald McNally Jr Mark S Blackman

Trustee(s):

David Seror (TR)	Represented By David Seror (TR) Richard Burstein Travis M Daniels Reagan E Boyce

10:30 AM
1:13-10518 Reliable Trust Deed Services, Inc. **Chapter 7**

#10.00 Motion for (1) Order to Disallow Claim 8-1 Filed by Hsing Liana Sidney Lin and Fang Chu; or in the Alternative, and Order Estimating the Value of Claim 8-1 at $1.00 for All Purposes

Docket 114

Tentative Ruling:

On May 28, 2013, Claimants Hsing Liana Sindey Lin and Feng Chu filed unsecured claim 8-1 against Debtor's estate in the amount of $1,500,000. The basis for the claim asserted is a lawsuit regarding a trustee's sale conducted by Debtor. Trustee objects to the allowance of Claim 8-1, arguing that the claim fails to describe the nature or extent of Debtor's involvement in the trustee's sale and Claimant has not provided any evidence to support the assertion that Debtor engaged in culpable conduct or whether (or to what extent) Debtor is responsible for Claimant's damages. Further, there is no evidence as to what the resolution of the litigation was (if any). Trustee rests his argument for disallowance on the vague and unsubstantiated nature and extent of the claim.

Under FRBP 3001(f), "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." A proof of claim provides "some evidence as to its validity and amount" and prima facie validity is "strong enough to carry over a mere formal objection without more." Lundell v. Anchor Construction Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000), quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991). To be legally sufficient and prima facie valid under FRBP 3001, a claim must: (1) be in writing; (2) make a demand on debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would make the allowance equitable. 9 Collier on Bankruptcy (15th ed. Rev. 2004) ¶3001.05[2].

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. FRBP 3001(f) states that a Proof of Claim filed and executed in accordance with the rules shall constitute prima facie evidence of the

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

validity and amount of the claim. FRBP 3001-3007. LR 3007-1.

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient objection to rely solely on an alleged lack of prima facie validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section 502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, *e.g.*, id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004). However, "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking prima facie validity.

"The court, after notice and a hearing, shall determine the amount of such claim… as of the date of the filing of the petition, and shall allow such claim, except to the extent that – (1) such claim is unenforceable against debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated." 11 U.S.C. §502(b).

An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP § 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified. LBR § 3007-1(c).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. 3 L. King, Collier

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

on Bankruptcy § 502.02, at 502–22 (15th ed. 1991).

Service on Claimant was proper, per the address listed for notice on Proof of Claim 8-1. No response filed.
OBJECTION SUSTAINED; Claim 8-1 is disallowed in its entirety.
TRUSTEE TO LODGE ORDER WITHIN 7 DAYS.
NO APPEARANCE REQUIRED ON 1-12-2022.

Party Information

Debtor(s):

Reliable Trust Deed Services, Inc.	Represented By Gerald McNally Jr Mark S Blackman

Trustee(s):

David Seror (TR)	Represented By David Seror (TR) Richard Burstein Travis M Daniels Reagan E Boyce

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1:13-10518 Reliable Trust Deed Services, Inc. **Chapter 7**

#11.00 Motion for (1) Order to Disallow Claim 9-1 Filed by Jeff Thompson; or in the Alternative, and Order Estimating the Value of Claim 9-1 at $1.00 for All Purposes

Docket 117

Tentative Ruling:

On May 28, 2013, Claimant Jeff Thompson filed unsecured claim 9-1 against Debtor's estate in the amount of $227,289.94. The basis for the claim asserted is a judgment for title to property and money held by Debtor. Trustee objects to the allowance of Claim 9-1, arguing that the claim lacks evidence as to the amount of the Claim, how it was calculated, or what happened to the funds that were held by Debtor, if any. Trustee rests his argument for disallowance on the vague and unsubstantiated nature and extent of the claim.

Under FRBP 3001(f), "a proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." A proof of claim provides "some evidence as to its validity and amount" and prima facie validity is "strong enough to carry over a mere formal objection without more." Lundell v. Anchor Construction Specialists, Inc., 223 F.3d 1035 (9th Cir. 2000), quoting Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991). To be legally sufficient and prima facie valid under FRBP 3001, a claim must: (1) be in writing; (2) make a demand on debtor's estate; (3) express the intent to hold the debtor liable for the debt; (4) be properly filed; and (5) be based upon facts which would make the allowance equitable. 9 Collier on Bankruptcy (15th ed. Rev. 2004) ¶3001.05[2].

Under section 502, a proof of claim is deemed allowed, unless a party of interest objects. FRBP 3001(f) states that a Proof of Claim filed and executed in accordance with the rules shall constitute prima facie evidence of the validity and amount of the claim. FRBP 3001-3007. LR 3007-1.

Per In re Heath, 331 B.R. 424 (B.A.P. 9th Cir. 2005), it is not a sufficient

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

objection to rely solely on an alleged lack of prima facie validity of the proof of claim and its documentation. In re Heath, 331 B.R. at 435, 437-38. Section 502 deems a claim allowed and directs that the bankruptcy court "shall" allow claims with limited exceptions (i.e. debtor was wrongly charged for goods or services, specific interest charges or fees were miscalculated or wrongly imposed). See, *e.g.*, id., 331 B.R. at 437-38. "If there is no substantive objection to the claim, the creditor should not be required to provide any further documentation of it." Id. at 436, citing In re Shank, 315 B.R. 799, 813 (Bankr. N.D. Ga. 2004). However, "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection." In re Heath, 331 B.R. at 436. Under In re Campbell, 336 B.R. 430 (B.A.P. 9th Cir. 2005), any objection that raises a legal or factual ground to disallow the claim will likely prevail over a proof of claim lacking prima facie validity.

"The court, after notice and a hearing, shall determine the amount of such claim… as of the date of the filing of the petition, and shall allow such claim, except to the extent that – (1) such claim is unenforceable against debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unliquidated." 11 U.S.C. §502(b).

An objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim executed and filed in accordance with FRBP § 3001. The evidence must demonstrate that the proof of claim should be disallowed, reduced, subordinated, re-classified, or otherwise modified. LBR § 3007-1(c).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more. 3 L. King, Collier on Bankruptcy § 502.02, at 502–22 (15th ed. 1991).

Service on Claimant was proper, per the address listed for notice on Proof of

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CONT... Reliable Trust Deed Services, Inc. **Chapter 7**

Claim 9-1. No response filed.
OBJECTION SUSTAINED; Claim 9-1 is disallowed in its entirety.
TRUSTEE TO LODGE ORDER WITHIN 7 DAYS.
NO APPEARANCE REQUIRED ON 1-12-2022.

Party Information

Debtor(s):

Reliable Trust Deed Services, Inc.	Represented By Gerald McNally Jr Mark S Blackman

Trustee(s):

David Seror (TR)	Represented By David Seror (TR) Richard Burstein Travis M Daniels Reagan E Boyce

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM

1:21-10079 Ara Eric Hunanyan **Chapter 7**

#12.00 Chapter 7 Trustees Motion for Entry Of an Order Authorizing:
(1) The Sale of Real Property Located at 16925 Gault Street, Van Nuys, California 91406, Free And Clear of Liens and Interests;
(2) Approving Overbid Procedures;
(3) Authorizing Payment of Undisputed Liens, Real Estate Brokers Commission, And Ordinary Costs of Sale; and
(4) Finding Purchaser is a Good Faith Purchaser.

fr. 7/28/21

Docket 102

***** VACATED *** REASON: Order approving sale entered 7/30/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ara Eric Hunanyan — Represented By Stephen L Burton

Trustee(s):

Nancy J Zamora (TR) — Represented By Ori S Blumenfeld, Jeremy Faith

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM

1:21-11493 Busarakom Keomanivong **Chapter 7**

#13.00 Motion for extension of time to file a complaint objecting to discharge Pursuant to 11 U.S.C. § 727 and/or a Motion to Dismiss Under 11 U.S.C. § 707(b)

Docket 28

Tentative Ruling:

Service proper. No opposition filed. Having reviewed the U.S. Trustee's Motion for Extension of Time to File Complaint Objecting to Discharge, the Court finds that cause exists for the extension of the bar date. Motion is GRANTED.

MOVANT TO LODGE ORDER WITHIN 7 DAYS.
APPEARANCES WAIVED ON 1-12-2022.

Party Information

Debtor(s):

Busarakom Keomanivong — Represented By Minh Duy Nguyen

Trustee(s):

David Seror (TR) — Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM

1:21-11524 Jet Midwest Group, LLC **Chapter 7**

#14.00 Application to Employ Pillsbury Winthrop Shaw Pittman LLP as Special Litigation Counsel

Docket 63

***** VACATED *** REASON: Cont'd per stipulation to 1/26/2022 at 10:30 a.m. - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jet Midwest Group, LLC — Represented By
Roye Zur

Trustee(s):

Amy L Goldman (TR) — Represented By
Peter J Mastan
Ashleigh A Danker
Dinsmore & Shohl llP
Claire K Wu

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM

1:21-11524 Jet Midwest Group, LLC **Chapter 7**

#15.00 Motion For Order Approving Trustees Settlement Agreement With Top Jet Enterprises, Ltd And Jet Midwest International, Co., Ltd

Docket 67

***** VACATED *** REASON: Cont'd per stipulation to 1/26/2022 at 10:30 a.m. - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jet Midwest Group, LLC — Represented By
Roye Zur

Trustee(s):

Amy L Goldman (TR) — Represented By
Peter J Mastan
Ashleigh A Danker
Dinsmore & Shohl llP
Claire K Wu

10:30 AM
1:21-11879 Oweleo Lysette Titi **Chapter 7**

#16.00 Convert to 13

fr. 12/15/21

Docket 6

Tentative Ruling:

This hearing was continued to allow the chapter 7 Trustee an opportunity to conduct a meeting of creditors under 341(a) on Dec. 22, 2021. Nothing has been filed since the continued hearing.

APPEARANCE REQUIRED

PREVIOUS TENTATIVE BELOW

Section 706(a) of the Bankruptcy code provides:

> (a) The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title. Any waiver of the right to convert a case under this subsection is unenforceable.

11 U.S.C. 706(a). The Supreme Court has found that a chapter 7 debtor can forfeit their right to convert the case to chapter 13 where debtor engaged in bad-faith conduct which would warrant dismissal or re-conversion of the chapter 13 case. Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 373-74 (2007). The court, however, warned that such action should only be taken by the court in the case of an "atypical litigant," or alternatively stated, in "extraordinary circumstances." Id. at 375; See Id. at N. 11. The court in Marrama found a bankruptcy court's authority under section 105(a) was sufficiently broad to deny a motion to convert under section 706 where the conversion would "merely postpone the allowance of equivalent relief and may provide debtor with an opportunity to take action prejudicial to creditors." Id.

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM

CONT... Oweleo Lysette Titi **Chapter 7**

APPEARANCE REQUIRED

Party Information

Debtor(s):

Oweleo Lysette Titi Pro Se

Trustee(s):

Nancy J Zamora (TR) Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

10:30 AM
1:12-10231 Owner Management Service, LLC **Chapter 7**

#17.00 Motion by Chapter 7 Trustee to: 1) Approve Sale of Real Property Located at 10757 Hortense Street #102, Motion to sell Los Angeles, California 91602 Free and Clear of All Liens, Interests, Claims, and Encumbrances with Such Liens, Interests, Claims and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b) and (f); 2) Approve Overbid Procedures; and 3) Determine that Buyer is Entitled to Protection Pursuant to 11 U.S.C. § 363(m)

Docket 2671

Tentative Ruling:

Trustee, moves pursuant to 11 U.S.C. §§ 363(b)(1), (f), and (m) of the Federal Rules of Bankruptcy Procedure, for an order (1) authorizing the Trustee to sell that certain real property located at 10757 Hortense St. #102, Los Angeles, CA 91602, free and clear of all liens, interests, claims, and encumbrances, with such liens, interests, claims, and encumbrances to attach to the Sale proceeds, with the same priority and rights of enforcement as previously existed; (2) approving solicitation of overbids concerning the sale of the Property at the hearing on the Moton and the procedures for such solicitation; (3) finding that the purchaser is a good faith purchaser pursuant to 11 U.S.C. § 363(m); and (4) approving payments for Broker's commissions, normal and customary escrow closing costs and the secured lienholders on the Property through escrow as set forth in the motion.

The Trustee received an offer to purchase the property from Buyers Luis Felipe Ruiz Ponce, Felipe Ruiz Cerda, and Laura Ruiz for $425,000, on an as-is, where-is basis, subject to overbid procedures described in Trustee's motion and a broker's commission of 6%.

Standard:
Section 363(b)(1) of the Bankruptcy Code provides that, "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). The standard of review used in determining approval of a proposed sale of

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CONT... Owner Management Service, LLC **Chapter 7**

property is whether sound business reasons support the sale outside the ordinary course of business. In re Walter, 83 B.R. 14, 19 (B.A.P. 9th Cir. 1988); In re Lionel Corp., 722 F.2d 1063, 1066 (2d Cir. 1983). In order for a sale to be approved under section 363 of the Bankruptcy Code, the purchase price must be fair and reasonable. In re Coastal Indus., Inc., 63 B.R. 361 (Bankr. N.D. Ohio 1986).

Having considered the Trustee's motion describing the terms of the sale and the overbid procedures, the Court finds that the sale is fair and equitable and that the Buyers are good faith purchasers under 363(m).

Motion GRANTED. Appearance required on 1-12-2022 to entertain overbidders, if any.

Party Information

Debtor(s):

Owner Management Service, LLC — Pro Se

Trustee(s):

David Seror (TR) — Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan
Robyn B Sokol
Jessica Wellington
Jeffrey L Sumpter

10:30 AM
1:19-12102 Hawkeye Entertainment, LLC **Chapter 11**
Adv#: 1:21-01064 Hawkeye Entertainment, LLC et al v. Chang et al

#18.00 Motion For Order Directing Plaintiffs To Pay Attorney's Fees Incurred By Defendants In Connection With Adversary Proceeding

Docket 32

Tentative Ruling:

On July 17, 2009, Hawkeye Entertainment, LLC ("Hawkeye") entered into a lease agreement ("Lease") with Pax America Development, LLC. Pursuant to the terms of the Lease, Hawkeye was entitled to use the first four floors and the basement of a building located at 618 South Spring Street, Los Angeles, California, more commonly referred to as the Pacific Stock Exchange Building (the "Property"). Hawkeye and WERM Investments, ("WERM") (collectively "Plaintiffs") entered into a sublease agreement. The Property is now owned by Smart Capital, LLC ("Smart Capital"), and there have been ongoing disputes between Smart Capital and Hawkeye for years. These disputes directly caused Hawkeye to file bankruptcy under chapter 11 of the Bankruptcy Code on August 21, 2019 (Case No. 1:19-bk-12102-MT). After a contentious bankruptcy case, which included five-day trial on a lease assumption motion ("Assumption Motion"), the Reorganized Debtor confirmed a plan.

The disputes between Hawkeye and Smart Capital continued. On September 20, 2021, the Plaintiffs filed an adversary complaint against Michael Chang (the owner of Smart Capital) and Smart Capital (collectively "Defendants") for: 1) preliminary injunctive relief; 2) temporary restraining order; 3) breach of contract; 4) breach of implied covenant of good faith and fair dealing; 5) breach of implied covenant of quiet enjoyment; 6) negligent interference with prospective economic advantage; 7) intentional interference with prospective economic advantage; and 8) intentional interference with contractual relations. The Plaintiff's also filed an emergency motion for a temporary restraining order and for issuance of an order to show cause why a preliminary injunction should not be issued. Docket No. 2. The Court denied the Plaintiffs' emergency motion. Docket No. 13.

Defendants filed a motion to dismiss the Complaint which was granted over

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CONT... Hawkeye Entertainment, LLC **Chapter 11**

the Plaintiffs' opposition. The case was dismissed for a lack of subject matter jurisdiction and without prejudice to refile the complaint in another court. See Docket No. 30. The Defendants now move for an award of attorney's fees and costs; the Plaintiffs oppose.

Standard:

The general rule is that the prevailing party is not entitled to collect attorney's fees from the losing party. Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 448 (2007). This default rule can be overcome by an applicable statute or enforceable contract. Id. The California Legislature codified the American Rule when it enacted California Code of Civil Procedure section §1021, which states in pertinent part:

> Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties; but parties to actions or proceedings are entitled to their costs, as hereinafter provided.

CCP § 1021; Trope v. Katz, 11 Cal. 4th 274, 278-79 (1995).

CCP § 1021 must be read in conjunction with Cal. Code Civ. P. §§ 1032 and 1033(5):

> (a) As used in this section, unless the context clearly requires otherwise: . . . (4) "Prevailing party" includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the "prevailing party" shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not. . . . (b) Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding.

CCP 1032(a) and (b); *see also* Hamilton v. Charalambous (In re Charlambous), 2013 Bankr. LEXIS 4655, *17-18 (B.A.P. 9th 2013). CCP 1033.5(a)(10)(A) provides:

> (a) The following items are allowable as costs under Section 1032: . . . (10) Attorney fees, when authorized by any of the following: . . . (A)

10:30 AM
CONT... Hawkeye Entertainment, LLC **Chapter 11**
Contract.

Collectively, by their terms, CCP § 1021, and Cal. Code Civ. P. §§ 1032 and 1033 make clear that attorney's fees may be sought by a prevailing party in disputes sounding in either tort or contract. Charalambous at *18. If there is an attorney's fees provision in an agreement between the parties, courts look to the language of the agreement to determine whether an award of attorney's fees is warranted. *See* 3250 Wilshire Boulevard Bldg. v. W.R. Grace & Co., 990 F. 2d 487, 489 (9th Cir. 1993); Klaus v. Thompson (In re Klaus), 181 B.R. 487, 500 (Bankr. C.D. Cal. 1995). The Ninth Circuit has held that "[d]ismissal of a complaint for lack of subject matter jurisdiction does not deprive the court of jurisdiction to hear a request for fees under state law." First & Beck, a Nevada LLC v. Bank of the Southwest, 267 Fed. Appx. 499, 502 (9th Cir. 2007), *citing* Kona Enterprises, Inc. v. Bishop, 229 F.3d 877, 887 (9th Cir. 2000)

Section 22.11(q) of the Lease provides:

> In the event that … either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder, the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual attorney's fees, and all fees, costs and expenses incurred in connection with such action or proceeding, including without limitation, any judgment fees, costs or expenses incurred on any appeal or in the collection of any judgment.

Parties do not dispute that the Lease allows the prevailing party to collect attorney's fees and costs from the other party. The parties dispute whether the dismissal of this case without prejudice for lack of subject matter jurisdiction makes the Defendants the prevailing party.

Section 22.11(q) of the Lease provides "the party not prevailing … shall reimburse the prevailing party…" Nothing in the Lease defines what a prevailing party is, so the term will be given its plain meaning and the meaning used under California law. Here, the Defendants were successful in having the case dismissed. The Defendants obtained all the relief they initially sought, having the case dismissed, and the Plaintiffs obtained none of the relief they sought. Even though the grounds for

dismissal were based on lack of subject matter jurisdiction and the dismissal was without prejudice, the fact remains the Defendant prevailed over the Plaintiffs in this action in front of this Court. This case was not transferred to another venue or remanded back to state court, which would likely be considered a more strategic posturing not warranting designating a prevailing party, however, this case was outright dismissed – even if it was dismissed without prejudice. It was assumed that the Plaintiffs will file another complaint in another court. The fact that the Plaintiffs could go on to file another complaint in a different court and end up prevailing there does not change the fact that the Defendants prevailed over the Plaintiffs in this case before this Court.

CCP § 1032 (a)(4) supports the Defendants being deemed the prevailing party. CCP § 1032 (a)(4) defines prevailing party to include "a defendant in whose favor a dismissal is entered…" The California Supreme Court has held that a trial court that dismissed a case for lack of subject matter jurisdiction has the power to award costs to the defendant under CCP § 1032. Barry v. State Bar of California, 2 Cal. 5th 318, 326 (2017) (*citing* Brown v. Desert Christian Center, 193 Cal. App. 4th 733 (2011). As enumerated in Barry, "[a] court has jurisdiction to determine its own jurisdiction, for a basic issue in any case before a tribunal is its power to act, and it must have authority to decided that question in the first instance." Barry at 326 (*citing* Rescue Army v. Municipal Court, 28 Cal. 2d 460, 464 (1946). As the found in Brown, trial courts necessarily have jurisdiction to determine the scope of their own jurisdiction and may award costs as incidental to the jurisdictional determination. Brown at 740-41.

Based on the plain language of CCP § 1032 and the California Supreme Court's ruling in Barry, the Defendants are the prevailing party here and are entitled to fees and costs associated with Plaintiffs filing this complaint. The Plaintiffs cite to authority that relates to CCC § 1717 and the Federal Rules of Civil Procedure, none of which is relevant here because the Defendants are not seeking fees pursuant to these sections.

Reasonableness of Fees

After a court decides that a contract provides attorneys' fees for a prevailing party, the court must determine the reasonableness of the requested fees. If the contract does not specify a particular sum, "it is within the trial court's discretion to

determine what constitutes reasonable attorneys' fees." Niederer v. Ferreira, 189 Cal. App. 3d 1485, 1507, 234 Cal. Rptr. 779 (1987) (citations omitted). In California, this inquiry "ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate." PLCM Group v. Drexler, 22 Cal. 4th 1084, 1095, 95 Cal. Rptr. 2d 198, 997 P.2d 511 (2000). "The reasonable hourly rate is that prevailing in the community for similar work." Id. "The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided." Id. (*citing* Serrano v. Priest, 20 Cal. 3d 25, 49, 141 Cal. Rptr. 315, 569 P.2d 1303 (1977) (in bank)). . . . "When apprised of the pertinent facts, the trial court may rely on its own experience and knowledge in determining the reasonable value of the attorney's services." Id.

Here, the Defendants seek $79,021 in attorney fees from the Plaintiffs. The Plaintiffs opposition does not address whether such fees are reasonable, so the Court will perform its own analysis. The hourly rates of the three attorneys working on this matter is reasonable. These attorneys are highly skilled and possess a vast wealth of experience. There is no need to adjust the hourly rate of any of the three attorneys. Initially the $79,021 amount in attorney's fees seems high considering this case consisted of an emergency motion for a TRO, a motion to dismiss, and a motion for an attorney's fee award; however, when all things are considered this figure appears to be more reasonable. There is a long and complicated history between the parties – most notably the parties involvement in the Hawkeye's most recent bankruptcy case. The actions that formed the basis of this complaint are related to the parties' relationship and actions that were also at issue in the Assumption Motion. Based on the numerous allegations in the complaint and the complex history between the parties, the investigation required by Defendants' counsel to prevail on the TRO was much higher than a typical case. Additionally, the Plaintiffs' counsel is equally skilled and experienced as the Defendants' counsel and the legal questions were more complex than a normal motion to dismiss. Having reviewed Defendants counsel's time sheet (Exhibit 11 to Defendants' motion), there is nothing that suggests duplicate or unnecessary work was performed, inflation or stacking of hours, or any fees incurred that were not related to this case. When these are all taken into account, the amount of work performed is reasonable. Fees and costs of $79,021 will be permitted.

10:30 AM
CONT... Hawkeye Entertainment, LLC **Chapter 11**

Joint and Several Liability

If a plaintiff sues a nonsignatory on a contract as if the nonsignatory were a contracting party, he becomes liable for fees under CCC section 1717(a) if the nonsignatory prevails. Dell Merk, Inc. v. Franzia, 132 Cal. App. 4th 443 (Ct. App. 2005), Reynolds Metals Co. v. Alperson, 25 Cal. 3d 124 (1979), and Burkhalter Kessler Clement & George LLP v. Hamilton, 19 Cal. App. 5th 38, 228 (Ct. App. 2018) "Neither CCCP section 1021 nor CCCP section 1032 provides that a nonsignatory to a contract can recover attorneys' fees. Nevertheless, we agree with the bankruptcy court's conclusion that nonsignatories may recover attorneys' fees under CCCP sections 1021 and 1032 just as they can under CCC section 1717." Asphalt Prof'ls, Inc. v. Davis (In re Davis), 2019 Bankr. LEXIS 2044, at *19 (B.A.P. 9th Cir. 2019). CCC § 1717 allows a nonsignatory defendant to recover attorney's fees if: (1) it was sued on a contract as if a party; and (2) the plaintiff would clearly be entitled to attorney's fees if plaintiff prevailed. *See* MBN Real Estate Invs., LLC v. JL AM Plus, LLC (In re Javedanfar), 2020 Bankr. LEXIS 1820, *3 (B.A.P. 9th Cir. 2020).

The Defendants seek an order holding both Plaintiffs, Hawkeye and WERM, jointly and severally liable for the award for attorney's fees and costs. The problem here is "[i]n cases involving nonsignatories to a contract with an attorney fee provision, the following rule may be distilled from the applicable cases: A party is entitled to recover its attorney fees pursuant to a contractual provision only when the party would have been liable for the fees of the opposing party if the opposing party had prevailed." Dell at 451 (*quoting* Real Property Services Corp. v. City of Pasadena, 25 Cal.App.4th 375, 382 (Ct. App. 1994). That is, Defendants are entitled to recover their attorney fees only if they would have been liable for WERM's attorney fees if WERM had prevailed. WERM subleases the Property from Hawkeye and has no valid basis to be awarded attorney's fees under the Lease, it is not a party thereto with rights and obligations. While the lines have frequently been blurred between WERM and Hawkeye, WERM is not a party that would qualify as a nonsignatory in order to award attorney's fees against it. Accordingly, Defendants' request to hold WERM joint and severally liable is denied.

The motion for attorney's fees is GRANTED as to Hawkeye only.

Appearance Required.

10:30 AM
CONT... Hawkeye Entertainment, LLC **Chapter 11**

Party Information

Debtor(s):

Hawkeye Entertainment, LLC	Represented By Sandford L. Frey

Defendant(s):

Michael Chang	Represented By David S Kupetz Steve Burnell
Smart Capital Investments I, LLC,	Represented By Steven Werth David S Kupetz Steve Burnell
Top Properties Corporation	Represented By David S Kupetz Steve Burnell

Plaintiff(s):

Hawkeye Entertainment, LLC	Represented By Sandford L. Frey
WERM Investments LLC	Represented By Sandford L. Frey

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

11:00 AM

1:18-11545 Ian Ellis Silber and Jane Ellen Silber **Chapter 11**

#19.00 Ch. 11 Post-Confirmation Status Conference/ Scheduling and Case Management Conference

fr. 8/27/20, 11/18/20, 1/27/21, 3/31/21; 6/2/21, 6/16/21, 6/30/21

Docket 1

***** VACATED *** REASON: Case closed on an interim basis Oct. 1, 2021 (ECF 256) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ian Ellis Silber

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia
Joyce Owens

Joint Debtor(s):

Jane Ellen Silber

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

11:00 AM

1:21-10493 Nayeli Del Carmen Orellana Flores **Chapter 7**

Adv#: 1:21-01069 Mezei v. Acatrinei

#20.00 Status Conferance Re: Complaint For:
Objection to Discharge of Specific Debt 11 U.S.C. Sec. 523(a)(4);
11 U.S.C. Sec. 523 (a)(2); and 11 U.S.C. Sec. 523 (a)(6)

Docket 1

Tentative Ruling:

This adversary complaint was filed on November 7, 2021 but no proof of service of summons has been filed. Further, the status report required under LBR 7016-1(a) was not filed jointly by the parties or unilaterally by Plaintiffs.

What is the status of this adversary proceeding?

APPEARANCE REQUIRED

Party Information

Debtor(s):

Nayeli Del Carmen Orellana Flores	Represented By D Justin Harelik

Defendant(s):

Sabrina A. Acatrinei	Pro Se

Plaintiff(s):

Tiborg Mezei	Represented By Michael R Totaro

Trustee(s):

David Seror (TR)	Pro Se

1:00 PM
1:19-11692 Robert Aleksanyan **Chapter 7**
Adv#: 1:21-01072 Bacquet et al v. Aleksanyan

#21.00 Motion to Dismiss Adversary Proceeding

Docket 8

Tentative Ruling:

On February 9, 2012, Charles and Victoria Bacquet ("Plaintiffs") entered into an agreement with Robert Aleksanyan ("Defendant") to perform work on a swimming pool. A dispute arose between the parties and in May 2018 the Plaintiffs filed a complaint in the state court. A default judgment was ultimately entered in favor the Plaintiffs on December 11, 2019.

On July 9, 2019, the Defendant filed a petition under chapter 7 of the Bankruptcy Code. The Plaintiffs were not listed as creditors and the default judgment was not listed as a debt in the Defendant's schedules. The Defendant received a discharge on January 13, 2020, and the bankruptcy case was closed the following day.

The Plaintiffs filed this complaint November 14, 2021, seeking to have the debt be deemed nondischargeable under 11 U.S.C. §523(a)(3). Defendant filed a motion to dismiss the complaint, Plaintiffs oppose.

Standard:
A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure,
made applicable to this proceeding by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure, challenges the sufficiency of the allegations set forth in the complaint. The complaint must contain a "short and plain statement of the claim," which shows that the plaintiff is entitled to relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citation omitted).

A dismissal under Rule 12(b)(6) may be appropriate when the complaint lacks a "cognizable legal theory" or "sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988) (citation omitted).

The Court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true. Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1122 (9th Cir. 2008) (citation omitted). However, the Court is not bound by conclusory statements, statements of law, or unwarranted inferences cast as factual allegations. Twombly, 550 U.S. at 555; Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994) (citations omitted).

Although "detailed factual allegations" are not required, a plaintiff must provide more than mere "labels and conclusions" or "formulaic recitation[s] of the elements of a cause of action" in order to provide grounds for relief. Twombly, 550 U.S. at 555 (2007) (citations omitted). Rather, a complaint "must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under *some* viable legal theory." Id. at 562 (emphasis in original) (citations omitted).

In Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), the Supreme Court elaborated on the Twombly standard: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (internal quotation marks and citations omitted). Facial plausibility exists when the plaintiff includes "factual content that allows the court to draw [a] reasonable inference that the defendant is liable for the misconduct alleged." Id. (citations omitted).

Under the Twombly and Iqbal standard, courts may use a two-pronged approach. First, courts should identify pleadings which are no more than "legal conclusion[s]" and therefore "not entitled to the assumption of truth." Id. at 680. (internal quotation marks and citations omitted). Legal conclusions must be supported by factual allegations. Id. at 678. Second, courts should determine whether the complaint's factual allegations "plausibly suggest an entitlement to relief," assuming the veracity of the well-pled factual allegations. Id. at 681.

When considering a 12(b)(6) motion to dismiss, the Court generally may not consider material beyond the pleadings, Fort Vancouver Plywood Co. v. United States, 747 F.2d 547, 552 (9th Cir.1984), unless properly submitted with the complaint. Amfac Mortg. Corp. v. Ariz. Mall of Tempe, Inc., 583 F.2d 426, 429-30

1:00 PM

CONT... Robert Aleksanyan **Chapter 7**

(9th Cir.1978). The Court may consider "allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th Cir. 2007) (citation omitted).

Court documents filed in an underlying bankruptcy case are subject to judicial notice in related adversary proceedings. Mullis v. United States Bankr. Court, 828 F.2d 1385, 1388 (9th Cir. 1987). However, courts do not assume facts that the plaintiff has not asserted, such that the defendant has "violated . . . laws in ways that have not been alleged." Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983).

The Defendant raises several reasons for why the complaint should be dismissed. The first is that the default judgment is void because it was entered in violation of the stay. "[J]udicial proceedings in violation of the automatic stay are void." In re Gruntz at 1074 (quoting Phoenix Bond & Indemnity Co. v. Shamblin (In re Shamblin), 890 F.2d 123, 125 (9th Cir. 1989)). An action that violates the stay is still void despite a party's lack of knowledge of the pending bankruptcy. See e.g., 40235 Washington Street Corporation v. Lusardi (In re Lusardi), 329 F.3d 1076 (9th Cir. 2003) (the Ninth Circuit deemed a county tax sale on real property void even though neither the county nor the purchaser had knowledge of the bankruptcy case). The default judgment is void by operation of law despite the Plaintiffs lack of knowledge; however, the underlying claim of debt (the contractual dispute) is not void. Just because the default judgment is void does not mean that the Plaintiffs cannot pursue the nondishargeability of the claim of debt.

The next issue raised by the Defendant is that the complaint does not satisfy the standard for a well pleaded complaint enumerated above. The Plaintiffs seek to have this debt be deemed nondischargeable under 11 U.S.C. § 523(a)(3) which provides:

> **a)**A discharge… does not discharge an individual debtor from any debt…
> **(3)**neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit—
> **(B)**if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and

> timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request…

11 U.S.C. § 523(a)(3)(B).

The complaint provides insufficient facts as to the cause of action and merely state legal conclusions. In order to prevail under section 523(a)(3)(B), the Plaintiffs have to show they lacked knowledge, they timely filed this complaint, and that the debt is on that would qualify under section 523(a)(2), (4), or (6). The complaint does state that the Plaintiffs had no knowledge of the Defendant's bankruptcy case; however, the complaint lacks factual allegations that relate to the timing of when and how the Plaintiffs learned of the bankruptcy case. The Plaintiffs will need to amend the complaint to provide further detail of when and how they discovered the Defendant's bankruptcy case in order to determine whether the complaint was timely.

The Plaintiffs argue that the debt falls under section 523(a)(2) and (6); thus, would be a qualifying debt under section 523(a)(3)(B). Section 523(a)(2)(A) excepts from discharge any debt "to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition." 11 U.S.C. §523(a)(2)(A). The Ninth Circuit has held that a creditor's claim of nondischargeability based on Section 523(a)(2)(A) must satisfy five elements: (1) the debtor made false statement or deceptive conduct; (2) the debtor knew the representation to be false; (3) the debtor made the representation with the intent to deceive the creditor; (4) the creditor justifiably relied on the representation; and (5) the creditor sustained damage resulting from its reliance on the debtor's representation. In re Slyman, 234 F.3d 1081, 1085 (9th Cir. 2000).

A debt is nondischargeable under § 523(a)(6) if it results from debtor's willful and malicious injury to another or to the property of another. There are three elements in order to succeed in an Section 523(a)(6) action:(1) willfulness; (2) maliciousness and (3) injury. Smith v. Entepreneur Media, Inc. (In re Smith) 2009 Bankr. LEXIS 4582, *20 (9th Cir. BAP 2009). The Supreme Court in Kawaauhau v. Geiger (In re Geiger), 523 U.S. 57, 118 S.Ct. 974, 140 L. Ed. 2d 90 (1998), made clear that for section 523(a)(6) to apply, the actor must intend the consequences of the act, not

simply the act itself." Ormsby v. First American Title Co. of Nevada (In re Ormsby), 591 F. 3d 1199, 1206 (9th Cir. 2010). Both willfulness and maliciousness must be proven to prevent discharge of the debt. Id. But, reckless or negligent acts are not sufficient to establish that a resulting injury falls within the category of willful and malicious injuries under §523(a)(6). Kawaauhau v. Geiger, 523 U.S. at 64.

Willfulness means intent to cause injury. Kawaauhau v. Geiger, 523 U.S. at 61. "The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" In re Plyam, 530 B.R. 456, 463 (9th Cir. BAP 2015) (quoting Kawaauhau v. Geiger, 523 U.S. at 61) The court may consider circumstantial evidence that may establish what the debtor actually knew when conducting the injury creating action and not just what the debtor admitted to knowing. In re Ormsby, 591 F. 3d at 1206. Recklessly inflicted injuries, covering injuries from all degrees of recklessness, do not meet the willfulness requirement of § 523(a)(6). In re Plyam, 530 B.R. at 464. Reckless conduct requires an intent to act instead of an intent to cause injury. Id. Therefore, the willful injury requirement "... is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carillo v. Su* (*In re Su*), 290 F.3d 1140, 1142 (9th Cir. 2002).

The "malicious" injury requirement under 11 U.S.C. §523(a)(6) is separate from the "willful" requirement, and both must be present for a claim under § 523(a)(6). Carillo v. Su (In re Su), 290 F.3d 1146 (9th Cir. 2002). A malicious injury is one that involves; "(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse." Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1209 (9th Cir. 2001). "Malice may be inferred based on the nature of the wrongful act," but to make such an inference, willfulness must be established first. Ormsby v. First Am. Title Co. (In re Ormsby), 591 F.3d 1199, 1207 (9th Cir. 2010). When analyzing the plain meaning of "malice," "it is the wrongful act that must be committed intentionally rather than the injury itself." Jett v. Sicroff (In re Sicroff), 401 F.3d 1101, 1106 (9th Cir. 2005).

There are a few problems with the complaint. First, the complaint alleges that the Defendant intentionally misrepresented he was licensed, that the Plaintiffs relied on the representation, and that the Plaintiffs suffered damages. These allegations are mere legal conclusions. There is nothing about what the Defendant actually represented and what damages the Plaintiffs suffered – the complaint lacks any state

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CONT... Robert Aleksanyan **Chapter 7**

court documents that may have provided some factual support for these conclusionary statements. The complaint needs factual allegations as to what happened between the Plaintiffs and the Defendant with regards to the contract. Second, these allegations need to be more tailored to the standards for section 523(a)(2) and (6). A complaint should allege facts as to each element; the complaint fails to allege sufficient facts as to a few elements of section 523(a)(2) and (6). Plaintiffs need to assert enough facts that show knowledge, intent, reliance, and what damages they are entitled to. For these reasons, the complaint is deficient as to alleging the debt is that which would qualify under section 523(a)(2) and (6) which is required to prevail in their 523(a)(3)(B) claims.

Rule 15(a)(2) of the Federal Rules of Civil Procedure states that "[t]he court should freely give leave [to amend] when justice so requires." F.R.Civ.P. 15(a)(2).23 If a complaint lacks facial plausibility, a court must grant leave to amend unless it is clear that the complaint's deficiencies cannot be cured by amendment. Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002). Based on the allegations it appears the problems in the complaint can be cured. The Defendant's discharge does not justify preventing the Plaintiffs from pursuing their section 523(a)(3)(B) claim.

The motion to dismiss will be granted with leave to amend. Plaintiffs need to amend the complaint to make factual allegations when they discovered the Defendant's bankruptcy case and how the underlying debt falls into sections 523(a)(2) and (6). Plaintiff has thirty days from the hearing to file an amended complaint.

Appearance Required.

Party Information

Debtor(s):

Robert Aleksanyan — Represented By
Richard A Avetisyan

Defendant(s):

Robert Aleksanyan — Represented By

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

1:00 PM

CONT... Robert Aleksanyan **Chapter 7**

Peter C Bronstein

Plaintiff(s):

Charles Bacquet	Represented By Vernon A Nelson Jr
Victoria Bacquet	Represented By Vernon A Nelson Jr

Trustee(s):

Amy L Goldman (TR)	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

1:00 PM

1:18-10828 Nazaret Kechejian **Chapter 13**

Adv#: 1:18-01101 Kechejian v. Mkrchyan et al

#22.00 Status Conference Re:
TRIAL - DAY 9

Re: Complaint for:
(1) Violation of California High Cost Mortgage Law;
(2) Violation of TILA;
(3) Violation of HOEPA;
(4) Violation of California Civil Code Sec. 1632;
(5) Unconscionability (Civil code Sec. 1688 e. seq);
(6) Intentional Misrepresentation;
(7) Fraud;
(8) Unfair Business Practices (BPC Sec. 17200)
(9) Declaratory Relief

fr. 11/7/18; 7/31/19; 9/25/19; 12/11/19, 9/30/20,
1/27/21; 6/10/21,6/21/21, 6/24/21, 6/25/21, 7/30/21; 8/9/21
11/4/21, 12/21/21

Docket 1

Tentative Ruling:

APPEARANCE REQUIRED

Party Information

Debtor(s):

Nazaret Kechejian	Represented By Stella A Havkin

Defendant(s):

Greg Mkrchyan	Pro Se
Kirill Kizyuk	Pro Se
Prime Capital Group, Inc., a	Pro Se

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Maureen Tighe, Presiding
Courtroom 302 Calendar

Wednesday, January 12, 2022 **Hearing Room 302**

1:00 PM

CONT... Nazaret Kechejian **Chapter 13**

Mkrtchyan Investments, LP, a	Pro Se
Arthur Aristakesyan	Pro Se
Phantom Properties, LLC, a Nevada	Pro Se
Dimitri Lioudkovski	Pro Se
LDI Ventures, LLC, a California	Pro Se

Plaintiff(s):

Nazaret Kechejian	Represented By Stella A Havkin

Trustee(s):

Elizabeth (SV) F Rojas (TR)	Pro Se